

§ 1.59-1

26 CFR Ch. I (4-1-08 Edition)

1981. D must recalculate the adjustments required under this section by treating \$5,000 of foreign tax credit from 1982 as carried back and (assuming that these credits do not exceed the limitation under section 904) used to reduce non-preference regular tax liability in 1981 to zero (\$0). That is, \$5,000 of the foreign tax credits earned in 1982 are treated as credits freed up because of D's tax preference items in 1981. Pursuant to the rules set forth herein, D must take into account the foreign tax credits from both 1981 and 1982 in determining to what extent a tax benefit was derived from the preference items used to determine actual regular tax liability in 1981 and in computing the credit reduction amount. When the \$5,000 of foreign tax credits from 1982 are considered, all preferences become non-beneficial preferences, and the credit reduction amount is \$4,010. Assuming that D elects the simplified method, the 1981 freed-up credits and the 1982 freed-up credits will each be reduced by the following percentage:

$$\frac{\$4,010 \text{ (credit reduction amount)}}{\$15,000 \text{ (total freed - up credits)}} = .2673$$

The 1981 freed-up foreign tax credits of \$10,000 are thus reduced by \$2,673 (\$10,000 multiplied by .2673), to \$7,327 and the 1982 freed-up foreign tax credits of \$5,000 are reduced by \$1,334 (\$5,000 multiplied by .2673) to \$3,666. D also files a claim for credit or refund of the \$167 of minimum tax paid in 1981.

Example 2. In 1985 corporation E's non-preference regular taxable income was \$25,000. E had no available credits. It paid zero in regular tax, however, because of \$25,000 in preference items. E paid \$2,250 of minimum tax on these preferences ((\$25,000 minus \$10,000) multiplied by .15). In 1986, E has additional investment tax credits. After application of the investment tax credit carryback rules, E would have \$1,000 investment tax credit from 1986 available for use in 1985. E must recompute the adjustments required under this section by treating \$1,000 of these 1986 investment tax credits as carried back and used to reduce non-preference regular tax liability for 1985. Pursuant to the rules of this section, all of these \$1,000 of credits are freed-up credits. Non-beneficial preferences are \$6,667 (\$1,000 grossed up at a 15 percent regular tax rate). Beneficial preferences are \$18,333 (\$25,000 minus \$6,667). Minimum tax on all preferences would be \$2,250 ((\$25,000 minus \$10,000) multiplied by .15); minimum tax on beneficial preferences would be \$1,250 ((\$18,333 minus \$10,000) multiplied by .15). Minimum tax attributable to the non-beneficial preferences is thus \$1,000 (\$2,250 minus \$1,250), which is the credit reduction amount. E thus reduces the \$1,000 of credits carried back to 1985 to zero. Under the rules of this section, the amount of minimum tax due for

1985 is redetermined. It is equal to the minimum tax on beneficial preferences, which, as described above, is \$1,250. Because E paid minimum tax of \$2,250 in 1985, E files a claim for credit or refund for \$1,000 of the minimum tax paid in 1985.

(f) *Treatment of net operating losses.*
[Reserved]

[T.D. 8416, 57 FR 19255, May 5, 1992; 57 FR 24848, June 11, 1992]

§ 1.59-1 Optional 10-year writeoff of certain tax preferences.

(a) *In general.* Section 59(e) allows any qualified expenditure to which an election under section 59(e) applies to be deducted ratably over the 10-year period (3-year period in the case of circulation expenditures described in section 173) beginning with the taxable year in which the expenditure was made (or, in the case of intangible drilling and development costs deductible under section 263(c), over the 60-month period beginning with the month in which the expenditure was paid or incurred).

(b) *Election—(1) Time and manner of election.* An election under section 59(e) shall only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the section 59(e) election begins. The statement must be filed no later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the section 59(e) election begins. Additionally, the statement must include the following information—

(i) The taxpayer's name, address, and taxpayer identification number; and

(ii) The type and amount of qualified expenditures identified in section 59(e)(2) that the taxpayer elects to deduct ratably over the applicable period described in section 59(e)(1).

(2) *Elected amount.* A taxpayer may make an election under section 59(e) with respect to any portion of any qualified expenditure paid or incurred by the taxpayer in the taxable year to which the election applies. An election under section 59(e) must be for a specific dollar amount and the amount

subject to an election under section 59(e) may not be made by reference to a formula. The amount elected under section 59(e) is properly chargeable to a capital account under section 1016(a)(20), relating to adjustments to basis of property.

(c) *Revocation*—(1) *In general*. An election under section 59(e) may be revoked only with the consent of the Commissioner. Such consent will only be granted in rare and unusual circumstances. The revocation, if granted, will be effective in the first taxable year in which the section 59(e) election was applicable. However, if the period of limitations for the first taxable year the section 59(e) election was applicable has expired, the revocation, if granted, will be effective in the earliest taxable year for which the period of limitations has not expired.

(2) *Time and manner for requesting consent*. A taxpayer requesting the Commissioner's consent to revoke a section 59(e) election must submit the request prior to the end of the taxable year the applicable amortization period described in section 59(e)(1) ends. The application for consent to revoke the

election must be submitted to the Internal Revenue Service in the form of a letter ruling request.

(3) *Information to be provided*. A request to revoke a section 59(e) election must contain all of the information necessary to demonstrate the rare and unusual circumstances that would justify granting revocation.

(4) *Treatment of unamortized costs*. The unamortized balance of the qualified expenditures subject to the revoked section 59(e) election as of the first day of the taxable year the revocation is effective is deductible in the year the revocation is effective (subject to the requirements of any other provision under the Code, regulations, or any other published guidance) and the taxpayer will be required to amend any federal income tax returns affected by the revocation.

(d) *Effective date*. These regulations apply to a section 59(e) election made for a taxable year ending, or a request to revoke a section 59(e) election submitted, on or after December 22, 2004.

[T.D. 9168, 69 FR 76616, Dec. 22, 2004]

§ 1.60 [Reserved]